

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, et al.,

Debtors.¹

PROMESA

Title III

No. 17 BK 03283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE EMPLOYMENT RETIREMENT
SYSTEM OF THE COMMONWEALTH
OF PUERTO RICO ("ERS"),

Debtor.

PROMESA

Title III

No. 17 BK 03566-LTS

SUR-REPLY

TO THE HONORABLE COURT:

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); (iv) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as bankruptcy case numbers due to software limitations).

COME NOW the Individual Plaintiffs Pedro José Nazario-Serrano, Joel Rivera-Morales, María de Lourdes Gómez-Pérez, Héctor Cruz-Villanueva, Lourdes Rodríguez and Luis M. Jordán-Rivera, all of them retirees/beneficiaries and plaintiffs in the claim for damages, that is currently pending in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part (the “Commonwealth Court”), without submitting to the jurisdiction of this Court, by and through the undersigned counsel, respectfully STATE and PRAY:

1. We are in receipt of the “*Reply In Further Support of Motion of UBS Financial Services Incorporated of Puerto Rico for Relief from the Automatic Stay*”, filed by *UBS Financial Services Incorporated of Puerto Rico* (hereinafter “UBS”).

2. For the reasons set forth in the “*Objection of the Individual Plaintiffs Retirees and Beneficiaries of the ERS Trust to the Motion of UBS Financial Services Incorporated of Puerto Rico for Relief from Automatic Stay*”, filed on November 26, 2019, [Docket No. 9341], as well as those reasons that will be argued at the December 11th, 2019’s Hearing, the UBS motion for leave and the “[*Proposed*] *Order Granting Limited Relief From The Automatic Stay To File Counterclaims*” should be denied in its entirety.

3. In the event, however, that the Court is inclined to grant UBS relief from the automatic stay, the appearing parties respectfully propose that the “[*Proposed*] *Order Granting Limited Relief From The Automatic Stay To File Counterclaims*” be issued pursuant to the attached **EXHIBIT A** recognizing as UBS candidly acknowledges that the filing of the UBS Motion to file a Counterclaim, is subject to the sole discretion of the Commonwealth Court, and further, that such *Order* is directed to the rights of the ERS alone and that any such leave would not affect the rights of the Individual Plaintiffs Retirees and Beneficiaries in ERS Action before the Commonwealth Court.

WHEREFORE, the appearing parties respectfully request this Honorable Court to take notice of the foregoing and that it deny UBS' request for lift of stay or in the alternative that any such order be issued as per the attached **EXHIBIT A**.

RESPECTFULLY SUBMITTED.

WE HEREBY CERTIFY: That a true and exact copy of this motion was served on counsels for UBS, McConnell Valdes LLC, 270 Muñoz Rivera Avenue, Hato Rey, Puerto Rico 00918 (Attn: **ROBERTO C. QUIÑONES-RIVERA, ESQ.**) and Skadden, Arps, State, Meagher & Flom LLP, One Rodney Square, P.O. Box 636, Wilmington, Delaware, 19899 (Attn: **PAUL J. LOCKWOOD, ESQ.**).

In San Juan, Puerto Rico, this 10th day of December, 2019.

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*Counsel for Individual Plaintiffs, Beneficiaries of the Retirement System
of the Commonwealth of Puerto Rico*

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="text-align: center;">as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, et al.,</p> <p style="text-align: center;">Debtors.¹</p>	<p>PROMESA Title III</p> <p>No. 17 BK 03283-LTS</p> <p>(Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="text-align: center;">as representative of</p> <p>THE EMPLOYMENT RETIREMENT SYSTEM OF THE COMMONWEALTH OF PUERTO RICO ("ERS"),</p> <p style="text-align: center;">Debtor.</p>	<p>PROMESA Title III</p> <p>No. 17 BK 03566-LTS</p>

**[PROPOSED] ORDER GRANTING LIMITED RELIEF FROM THE AUTOMATIC
STAY TO FILE COUNTERCLAIMS**

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); (iv) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as bankruptcy case numbers due to software limitations).

Upon consideration of the *Motion of UBS Financial Services Incorporated of Puerto Rico for Relief From the Automatic Stay* (Dkt. No. 8823) (the “Motion”) and all related filings; adequate notice having been given to all relevant parties; objections to the requested relief having been withdrawn or overruled on the merits; and the Financial Oversight and Management Board, acting through its Special Claims Committee (the “Oversight Board”) having consented to the relief requested to the extent provided herein; for good cause shown, it is hereby **ORDERED** that:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Bankruptcy Code section 362, made applicable by PROMESA section 301(a), the automatic stay is hereby lifted to allow UBS Financial Services Incorporated of Puerto Rico (“UBS Financial”) to seek leave from the Commonwealth Court to file its proposed counterclaims in *Administración de los Sistemas de Retiro de los Empleados del Gobierno y la Judicatura de Puerto Rico v. UBS Fin. Servs. Inc. of Puerto Rico*, Civil No. KAC-2011-1067 (803) (the “ERS Action”), without waiver of, and subject to, any and all defenses. The Commonwealth Court may, at its sole discretion, grant or deny the filing of the counterclaim.
3. The automatic stay will, as a matter of law, stay further prosecution and defense of the proposed counterclaims upon their filing in the ERS Action. This reimposition of the automatic stay is without prejudice to UBS Financial’s right to seek further stay relief from this Court, and UBS Financial reserves all rights to seek further stay relief in its sole discretion.
4. The Oversight Board may file a motion to argue that the automatic stay extends solely to the ERS Action, excluding the claims and causes of action of the individual Plaintiffs Retirees and Beneficiaries of the ERS, or otherwise move to stay the ERS Action, (solely with respect to the ERS) following the filing of UBS Financial’s proposed counterclaims, if allowed by the Commonwealth Court. Any party to the ERS Action may file a response or joinder to such motion described in this paragraph.

5. Any such motion described in Paragraph 4 of this Order, if allowed by the Commonwealth Court, shall be heard at the Court's January 29th, 2020 omnibus hearing, subject to adjournment as may be agreed by the parties or otherwise ordered by the Court. The filing deadlines and procedures for such motion, response, and reply shall be governed by the Tenth Amended Case Management Procedures (Dkt. No. 8027).

6. For the avoidance of doubt, nothing in this Order shall prevent the Oversight Board, the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"), UBS Financial, or the filing parties to the Objection of the Individual Plaintiffs Retirees and Beneficiaries of the ERS Trust to the *Motion of UBS Financial Services Incorporated of Puerto Rico for Relief From Automatic Stay* (Dkt. 9341) from seeking or agreeing to further relief, and the parties reserve all rights to do so.

7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. A copy of this Order shall be entered on the docket in the ERS Action by UBS Financial and served on all appropriate parties to the ERS Action.

9. The parties reserve all rights and defenses.

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

11. This Order resolves Docket Entry No. 8823.

Dated: _____, 2019

Honorable Laura Taylor Swain
United States District Judge